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POLICE OFFICER'S HANDBOOK

THE CRIMINAL LAW

PART XXI

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SUSPECT VEHICLE...  
INVESTIGATORY STOP  
(US V. RIAZ, 524 F2d 118)

STATE DOCUMENTS

SEARCH OF BEDROOM...  
CONSENT OF PARENT  
(US V. PETERSON, 524 F2d 167)

SEARCH OF RESIDENCE...  
CONSENT OF ESTRANGED WIFE  
(US V. LONG, 524 F2d 660)

FLEMING'S NOTEBOOK...Chapter 121:  
Richland County Court May Not Enjoin License  
Suspension in Connection With a Breathalyzer  
Test. (Harden v. SCHD, SC, 1-20-76)

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Justice Academy.

LAW ENFORCEMENT - ETV TRAINING PROGRAM

POLICE OFFICER'S HANDBOOK

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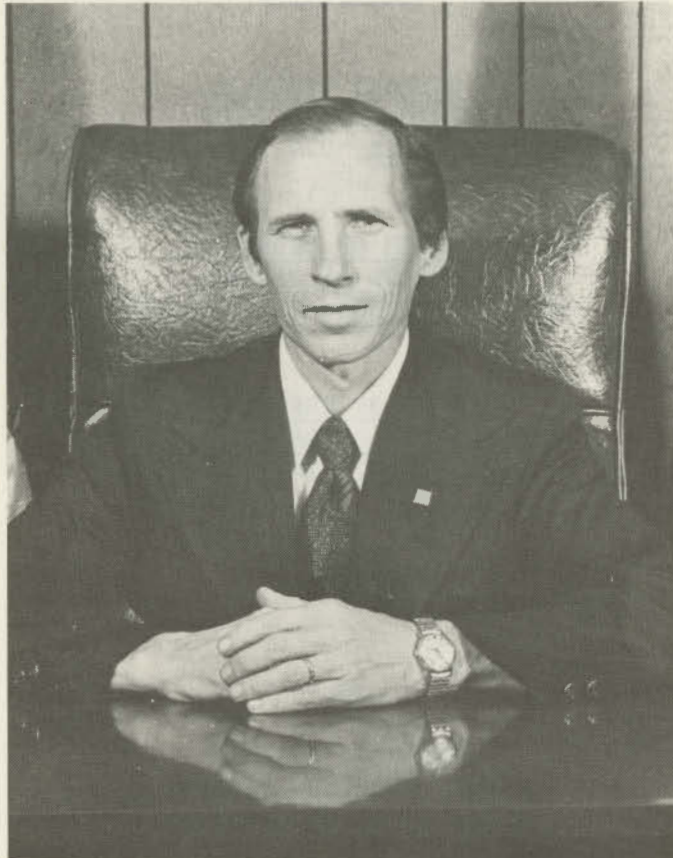
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By

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Endorsed by

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South Carolina Southern Police Institute Associates



Hon. W.P. Baskin, III  
City Recorder  
Bishopville, South Carolina

"For a police officer to be justified in stopping a motor vehicle for purposes of investigation, the officer should be aware of facts upon which he can reasonably suspect that someone in the car is engaged in criminal activity."

W.P. Baskin, III

City Recorder

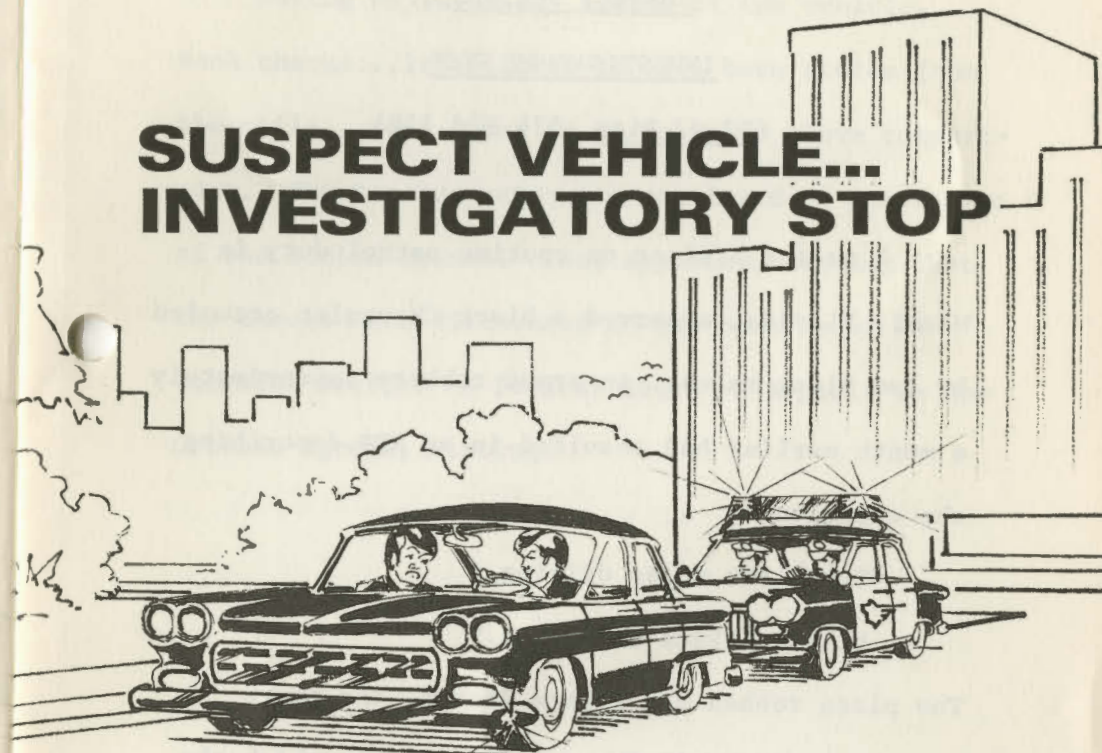
Bishopville, South Carolina



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# SUSPECT VEHICLE... INVESTIGATORY STOP



SUSPECT VEHICLE...

INVESTIGATORY STOP

(US v. Riaz, 524 F2d 118)

A police officer on routine patrol duty in Miami, Florida, observed a black Chevrolet occupied by two black males. An armed robbery approximately a month earlier had resulted in an APB describing the culprits:

"Two black males driving a  
blue or black Chevrolet."

The place robbed was a Farm Stores, and there was a Farm Store in the neighborhood in which the officer spotted the suspect vehicle.

The suspect car was stopped, and the two occupants gave conflicting stories as to what they were doing in the neighborhood. Both were arrested, one being charged with lying to a police officer (Miami City Code) and the other with unlawful loitering and prowling (Miami City Code).

During an inventory search of the vehicle, bank checks...later found to have been stolen from the mails...were found in an unlocked glove compartment. The two suspects were convicted of possession of the stolen checks. They appealed, arguing that the checks were discovered in the process of an unlawful search. A Federal Court of Appeals in New Orleans agreed, stating:

DID THE POLICE OFFICER HAVE

GOOD REASON TO STOP RIAZ?

"The courts have recognized the right of a police officer to stop and detain an individual under certain circumstances.

"The circumstances required to justify such action, however, must be sufficient to enable a police officer reasonably to suspect that the particular individual is involved in criminal activity.

"A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

"In the instance case, the facts known to the officer at the time he stopped the defendant clearly did not rise to the required level, and in reality

were so tenuous as to provide virtually no grounds whatsoever for suspicion. The officer was unsure whether the automobile used in the robberies was black or blue; the only description of the robbers was that they were black males; the last armed robbery of which he had any knowledge had occurred at least two weeks, and possibly a month, earlier; it was not unusual for blacks to be seen in the area; it was midday; the suspects made no attempt to flee. In short, the officer simply stopped two black males because they were in a black Chevrolet. This fact alone, without additional reliable evidence sufficient to warrant the conclusion that either or both of the men had been or were involved in criminal activity, did not constitute cause to stop the vehicle."



REASON FOR RULING

"Were we to fail, on these facts, to condemn the actions of the officer in stopping and arresting Riaz, there would remain virtually no limitations on the power of the police to stop, arrest, and search citizens and their vehicles and then use any incriminating evidence they may find in a court of law. Such unbridled license would effectively eliminate from the Constitution the Fourth Amendment protection afforded citizens in public places. That is a result which we cannot condone.

"Reversed."

# **CONSENT SEARCH...**

## **(1) EFFECT OF POLICE PRESENCE**



## **(2) PARENT'S RIGHT TO CONSENT**

BEDROOM SEARCH...

- (1) Police Presence
- (2) Parent's Right to Consent

(US v. Peterson, 524 F2d 167)

Robbery of a bank in Alexandria, Virginia, had taken place and police suspected Stanley Peterson, who lived in a house rented by his mother. Stanley, with his two brothers, occupied one bedroom of the house, while the mother occupied the other. The mother was head of the household and paid the rent.

There being insufficient grounds upon which to obtain a search warrant, the officers went to the Peterson home and talked with the mother. Neither Stanley nor either of his brothers was at home. The mother gave her consent to search of the house, including Stanley Peterson's bedroom.

Evidence of the robbery was found in Stanley Peterson's bedroom and was used at trial. After

conviction, appeal was taken, it being argued that the mother could not give permission to search her son's bedroom, and, even if such search was lawful, that the presence of several police officers when they asked permission to search intimidated the mother so that her consent was not voluntarily given.

The Court's rulings:



MOTHER'S RIGHT TO CONSENT

TO SEARCH OF SON'S BEDROOM

"In this case, the home searched was that of the mother. She maintained it as a family home. She made it available to all her children living at home with her, including Stanley Peterson. All the children recognized it as belonging to the mother and as being under her "control". That was the basis given by the daughter who, in refusing to give her consent, told the police that only her mother had the authority to consent to a search.

"Had the issue been presented to us initially, we would have concluded the search valid as to Stanley Peterson. We find particularly persuasive in arriving at that result. Mr. Justice (then Circuit Judge) Blackmun, upholding the right of a mother to consent to a search of a room in the home shared, as here, by the defendant with his two younger brothers, said (pp.336-37):

"What then, is the effect of this voluntary consent on the part of Maxwell's mother? We recognize, of course, that constitutional rights are not to depend upon 'subtle distinctions, developed and refined by the common law in evolving the body of private property law.' Jones v. United States, supra, 362 U.S. 257, 266, 80 S.Ct. 725, 733, 4 L.Ed. 2d 697, 733 (1960). But this is not a case of property right distinctions. The defense concedes that Mrs. Maxwell possessed a proprietary interest in the house; that Maxwell himself only shared a room there with his two younger brothers; and that no landlord-tenant relationship existed between Maxwell and his parents. Mrs. Maxwell had control of the premises, undiminished by any kind of less-than-fee interest possessed by Maxwell. This fact stands in contrast to the hotel or rental situations. (Citations omitted.) The situation strikes us as being no different, factually, than if Mrs. Maxwell herself had brought \* \* \* (the seized item), it

being properly in her possession, to the authorities.

They came to the home, it is true, but they obtained

\* \* \* (it) by freely allowed access to the home \* \*

\*."

DID PRESENCE OF POLICE

INTIMIDATE THE MOTHER?

"On appeal the appellants redouble their efforts in an attempt to persuade us that the District Court erred in finding that Mrs. Peterson's consent was freely and voluntarily given. This, however, is a factual question, to be determined by the trier of fact in light of the "totality of all the surrounding circumstances" and is binding on us unless clearly erroneous. Schneckloth v. Bustamonte (1973) 412 U.S. 218, 226, 93 S.Ct. 2041, 2047, 36 L.Ed. 2d 854.

Manifestly, the mere presence of police officers in the Peterson home, absent any indication of coercive words or acts on their part, is insufficient to raise an inference that Mrs. Peterson's consent was an unwitting and unwilling submission to police authority."

The convictions were upheld.



## SEARCH OF HOUSE... CONSENT OF WIFE



### SEARCH OF RESIDENCE...

#### CONSENT BY ESTRANGED WIFE

(US v. Long, 524 F2d 660)

Police got 'street' talk that a suspect, Long, had made an unlawful purchase of pistols. Long was a convicted felon and could not lawfully purchase the weapons. There were no facts known to police upon which a search warrant could be obtained.

Long's wife had moved out of the house she had occupied with her husband a few days before, because of fear of Long, and had moved to other quarters.

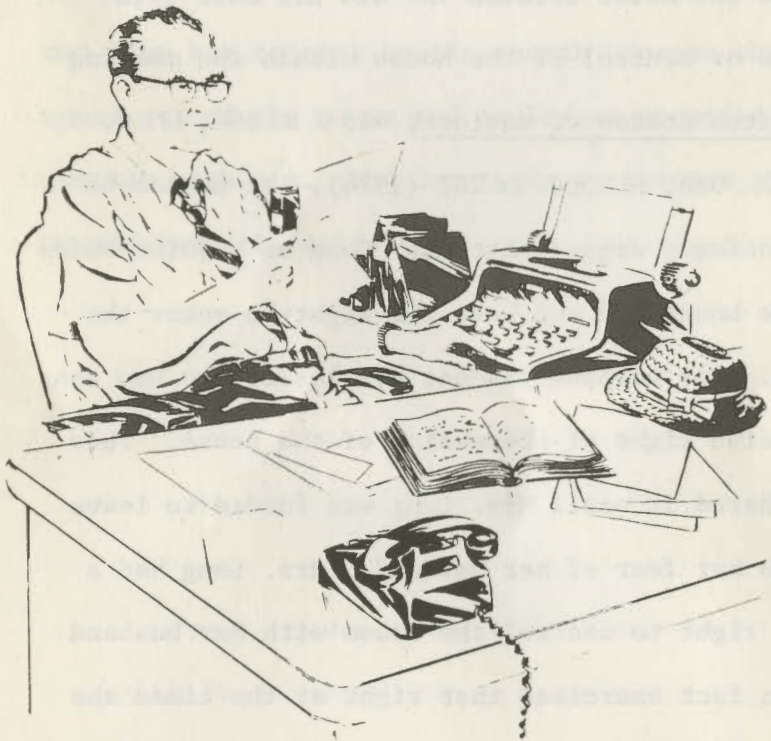
Police persuaded the wife to go to her husband's house with them and give them consent to search it. She consented and accompanied them. Long had changed the locks. It was necessary that they break in. They did. The house was searched and two pistols found. They were traced by serial numbers



to Long, who had purchased them unlawfully under an assumed name. Long was convicted on two counts of unlawfully buying the pistols. He appealed, arguing that the search was unlawful because there was no search warrant and contending that his wife could not give her consent to the search because she had moved out of the house and no longer occupied it jointly with him. The Court, in an opinion by Judge Donald Russell, said:

"Long first claims that his conviction should be reversed because it is based on evidence which is the product of illegal searches. It is asserted that Mrs. Long could not give a valid consent to search the house because she did not have joint access or control of the house within the meaning of United States v. Matlock, 415 U.S. 164, 171 n. 7, 94 S.Ct. 988, 39 L.Ed. 2d 242 (1974). It cannot be convincingly argued that Mrs. Long as a joint owner of the house did not have the right to enter the house. Her husband was not her lessee who had the exclusive right of possession of the house. They had shared it until Mrs. Long was forced to leave due to her fear of her husband. Mrs. Long had a joint right to control the house with her husband and in fact exercised that right at the times she accompanied the agents to the house by collecting her personal belongings from the house while the agents were conducting the searches. Mrs. Long's consent was valid."

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK...Chapter 121:

RICHLAND COUNTY COURT MAY NOT ACT IN  
STATEWIDE MATTER (BREATHALYZER TEST)

The South Carolina Supreme Court has held that the Richland County Court does not have the power to restrain the South Carolina State Highway Department from suspending a driver license for refusal to take a breathalyzer test.

In a January 20, 1976 decision, the Supreme Court reversed the action of the Richland County Court, stating that the County Court was not empowered to interfere in the matter at all. Harden v. State Hwy Dept. et al, No.20 148, filed January 20, 1976.

Harden had refused to take the breathalyzer test and his license was suspended. The County

Court issued its order reversing the Department and restraining it from effecting further suspension. The Department appealed. The Supreme Court then reversed the County Court, holding:

"The appellant is...an agency of the State government performing statewide functions. The jurisdiction of the Richland County Court is limited to Richland County; and it necessarily follows that Section 15-764, supra, only grants to Richland County Court concurrent jurisdiction with the circuit court in such matters in Richland County. As such court of limited jurisdiction, it has no authority to restrain or direct appellant in the performance of his duties for the State government. Any other holding would extend the jurisdiction of the county court beyond its territorial limits and confer upon it the authority to restrain statewide governmental activities."

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